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Citation: 1 William H. Manz Federal Copyright Law The Histories of the Major Enactments of the 105th 19117 1999

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including strengthening of jurisdictional provision.

Section 1103: Narcotics-related public corruption

Adopts special provisions for drug-related public corruption, including severe penalties.

TITLE XII—ADMINISTRATIVE SUBPONEA

Section 1201: Administrative summons authority of United States Secret Service

Allows high-ranking Secret Service agents to issue an administrative subponea for information in cases in which the President or other federal protectees are in danger. The Department of Agriculture, the Resolution Trust Corporation, and the Food and Drug Administration already have administrative subponea power.

TITLE XIII—COMPUTER CRIMES

Section 1301: Protection of classified government information

Penalizes individuals who deliberately break into a computer, or attempt to do so, without authority and, thereby, obtain and disseminate classified information.

Section 1302: Protection of financial, government, and other computer information

Makes interstate or foreign theft of information by computer a crime. This provision is necessary in light of *United States* v. *Brown*, 925 F.2d 1301, 1308 (10th Cir. 1991), where the court held that purely intangible intellectual property, such as computer programs, cannot constitute goods, wares, merchandise, securities, or monies which have been stolen, converted, or taken within the meaning of 18 U.S.C. §2314.

Section 1303: Protection of government computer systems

Makes two changes to §1030(a)(3), which currently prohibits intentionally accessing, without authorization, computers used by, or for, any department or agency of the United States and thereby "adversely" affecting "the use of the Government's operation of such computer." First, it deletes the word "adversely" since this term suggest, inappropriately, that trespassing in a government computer may be benign. Second, the bill replaces the phrase "the use of the Government's operation of such computer" with the term "that use." When a computer is used for the government, the government is not necessarily the operator, and the old phrase may lead to confusion. The bill makes a similar change to the definition of "protected computer" in §1030(e)(2)(A).

Section 1304: Increased penalties for significant unauthorized use of a computer system

Amends 18 U.S.C. §1030(a)(4) to insure that felony level sanctions apply when unauthorized use or use in excess of authorization is significant.

Section 1305: Protection from damage to computer systems

Amends 18 U.S.C. §1030(a)(5) to further protect computer systems covered by the statute from damage by anyone who intentionally damages a computer, regardless of whether they were authorized to access the computer.

Section 1306: Protection from threats directed against computer systems

Adds a new section to 18 U.S.C. §1030(a) to provide penalties for the interstate transmission of threats directed against computers and computer networks. The new section covers any interstate or international transmission of threats against computers, computer networks, and their data and programs, whether the threat is received by mail, telephone, electronic mail, or through a computerized messaging service.

Section 1307: Increased penalties for recidivist and other sentencing changes

Amends 18 U.S.C. 1030(c) to increase penalties for those who have previously violated any subsection of §1030. This section provides that anyone who is convicted twice of committing a computer offense under §1030 would be subject to enhanced penalties.

Section 1308: Civil actions

Limits damage to economic damages, where the violation caused a loss of $1,000 or more during any one-year period. No limit on damages would be imposed for violations that modified or impaired the medical examination, diagnosis or treatment of a person; caused physical injury to any person; or threatened the public health or safety.

Section 1309: Mandatory reporting

The current reporting requirement under §1030(a)(5) is eliminated. By ensuring that most high technology crimes can be prosecuted, there is less need for reporting requirements. Convictions will provide more information on computer crime. To create a mandatory reporting requirement is unnecessary because private sector groups, such as the Forum of Incident Response and Security Teams (FIRST), are leading the effort to monitor computer crimes statistically.

Section 1310: Sentencing for fraud and related activity in connection with computers.

Requires the United States Sentencing Commission to review existing sentencing guidelines as they apply to sections 1030 (a)(2), (a)(3), (a)(4), (a)(5), and (a)(6) of Title 18 of the United States Code (The Computer Fraud and Abuse Act). The Commission must also establish guidelines to ensure that criminals convicted under these sections receive mandatory minimum sentences for not less than 1 year. Currently, judges are given great discretion in sentencing under the Computer Fraud and Abuse Act. In many cases, the sentences don't match the crimes; and criminals receive light sentences for serious crimes. Mandatory minimum sentences will deter computer "hacking" crimes, and protect the infrastructure of computer systems.

Section 1311: Asset forfeiture for fraud and related activity in connection with computers

Amends 18 U.S.C. §1030(a)(2), (a)(3), and (a)(4) to insure that individuals who commit crimes under the aforementioned sections will forfeit the property used in connection with those crimes. For example, computers and "hacking" software used in crimes would be subject to forfeiture.

TITLE XIV—COMPUTER SOFTWARE PIRACY

Section 1401: Amendment of title 17

Amends 17 U.S.C. §506(a) to extend criminal infringement of copyright to include any person—not just those who acted for purposes of commercial advantage or private financial gain—who willfully infringes a copyright. Corrects the problem highlighted by the *United States* v. *LaMacchia*, 871 F. Supp. 535 (D. Mass. 1994), that a person could pirate software maliciously, so long as they received no financial gain.

Section 1402: Amendment of title 18

Amends 18 U.S.C. 2319 to allow the court, in imposing a sentence on a person convicted of software piracy, to order that the person forfeit any property used or intended to be used to commit or promote the commission of such offense.

TITLE XV—INTERNET GAMBLING

Section 1501: Amendment of title 18

Amends 18 U.S.C. §1084 to insure that individuals who gamble or wager via wire or electronic communication are penalized—not just those who are in the business of gambling. Current statutes make it illegal only if you are in the business of sports gambling on the INTERNET. This section would make it illegal to gamble on "virtual casinos" as well as electronic sports books.

Section 1502: Sentencing guidelines

Requires the United States Sentencing Commission to review the deterrent effect of existing sentencing guidelines as they apply to sections 1084 of Title 18 and promulgate guidelines to ensure that criminals convicted under section 1084 receive mandatory minimum sentences for not less than one year.

Section 1503: Reporting requirements

Requires the Attorney General to report to Congress on (1) the problems associated with enforcing INTERNET gambling, (2) recommendations for the best use of resources of the Department of Justice to enforce section 1084 of Title 18, (3) recommendations for the best use of the resources of FCC to enforce section 1084 of title 18, and (4) an estimate on the amount of gambling activity on the INTERNET. It is not clear how effective law enforcement can police the INTERNET. A report may answer that question.

By Mr. SIMON (for himself, Mr. HATCH, Ms. MOSELEY-BRAUN, Mr. BOND, and Mr. ASHCROFT):

S. 1496. A bill to grant certain patent right for certain non-steroidal anti-inflammatory drugs for a 2-year period; to the Committee on the Judiciary.

PROPERTY RIGHT PROTECTION LEGISLATION

Mr. SIMON. Mr. President, today, I introduce legislation to grant for a 2-year period additional property right protection for oxaprozin, an important drug in treating arthritis. Oxaprozin is a non-steroidal, anti-inflammatory drug [NSAID]. It is produced and marketed as Daypro by the G.D. Searle & Co., headquartered in Skokie, IL. I am introducing this legislation as a matter of simple fairness and equity because of a protracted review by the Food and Drug Administration [FDA] that consumed the entire patent life of Daypro.

The Drug Price Competition and Patent Term Restoration Act of 1984, commonly referred to as the Hatch-Waxman Act, was designed in part to address the unfairness caused by unduly long FDA reviews. Unfortunately, the two major protections created by Hatch-Waxman did not remedy Daypro's situation. First, Hatch-Waxman provides patent extensions in cases of regulatory delay. Ironically, since the FDA review consumed Daypro's entire patent life, the delay rendered Daypro ineligible for a patent extension; Hatch-Waxman simply did not contemplate that an FDA review would consume the entire patent life of a drug prior to its approval. Second, Hatch-Waxman allows up to 10 years of market exclusivity to brand name drug manufacturers following protracted FDA review. If the FDA had promptly approved Daypro, Daypro would have been protected for 10 years; however, as a result of the delay, Daypro only received 5 years of marketing exclusivity protection.

The legislation I am introducing today would provide Daypro 2 years of property right protection beyond the 5 years provided in the Hatch-Waxman Act. This additional property right protection is being sought because the

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